



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201304013

OCT 31 2012

T:EP:RA:T2

Uniform Issue List: 402.00-00

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Legend:

Taxpayer A = \*\*\*  
Amount A = \*\*\*  
Plan X = \*\*\*

Dear :

This is in response to your request received on July 15, 2011, as supplemented by correspondence dated August 15, 2012 and August 17, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that she received a distribution of Amount A from Plan X. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to her medical condition and treatments for such condition which impaired her ability to accomplish a timely rollover. Taxpayer A further represents that Amount A has not been used for any other purpose.

Taxpayer A's former husband was a participant in Plan X, a plan that is treated as a qualified plan under section 7701(j) of the Code. As a result of a divorce settlement, Taxpayer A was entitled to receive a distribution from Plan X, which was made on November 17, . Taxpayer A represents that she suffers from a medical condition and was undergoing treatment for such condition during the time of the distribution that caused severe memory loss resulting in her failure to recall the deadline for rolling over the distribution into an IRA.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement in section 402(c)(3) of the Code with respect to the distribution of Amount A.

Section 7701(j)(1)(A) of the Code provides that Plan X's trust shall be treated as a trust described in section 401(a), and is exempt from taxation under section 501(a).

Section 7701(j)(1)(B) of the Code provides that any contribution to, or distribution from the Plan X's trust shall be treated in the same manner as contributions to or distributions from a trust described in section 401(a).

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) (related to required minimum distributions).

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Section 1.402(c)-2, Question and Answer-12 provides that the eligible rollover distribution rules also apply to distributions to a spousal distributee (such as a former spouse who is an alternate payee under a qualified domestic relations order).

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by her medical condition and treatments for such condition which impaired her ability to accomplish a timely rollover.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A

into a Rollover IRA/another qualified plan. Provided all other requirements of section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a rollover contribution within the meaning of section 402(c)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact \*\*\*\*\* at \*\*\*\*\*  
\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

  
Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: \*\*\*